

## REMARKS

### *Status of and Amendment to the Claims*

Claims 1, 2, 8, 9, 41, 42, and 45-48 are pending in the present application. Claims 43 and 44 have been canceled. Independent Claim 41 has been amended to include matter indicated to be allowable (previously Claim 43) in the Office Action dated May 16, 2005. Further, independent Claim 1 has been amended. Such amendment is supported throughout the specification, and in particular, paragraph [0017] of the specification. No new matter has been introduced.

### *Claim Rejections – 35 U.S.C. § 112, second paragraph*

Claim 44 stands rejected under 35 U.S.C. §112, second paragraph. By this reply, Applicant has canceled claim 44 thereby obviating the present rejection.

### *Claim Rejections – 35 U.S.C. § 102*

#### *35 U.S.C. § 102(b)*

Claims 1, 2, 8, and 9 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,904,285 by Anderson et al. (hereinafter referred to as Anderson). Applicant respectfully traverses. Claim 1 from which 2, 8, and 9 depend includes the limitation of “the nail loading assembly being an adjustable angle magazine” and “a universal adapter assembly coupled to the adjustable angle magazine for allowing the pivotal coupling of the adjustable angle magazine with the nail driving assembly” which are not taught by Anderson. As the Office is well aware:

In order to prove a *prima facie* case of anticipation, “a single prior source must generally contain all of the essential elements of the claim.” *W.L. Gore & Assoc. v. Garlock, Inc.*, 220 USPQ 303, 313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Further, “the prior art reference must disclose each element of the claimed invention arranged as in the claim.” *Lindermann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Anderson teaches a nail transfer apparatus with an axle coupled to a nail loading assembly, however, the nail loading assembly is not taught or suggested to be “an adjustable angle magazine.” Further, Anderson does not disclose or suggest “a universal adapter assembly coupled to the adjustable angle magazine for allowing the pivotal coupling of the adjustable angle magazine with the nail driving assembly.” Therefore, a *prima facie* case of anticipation has not been established. Applicant respectfully requests the removal of the pending 35 U.S.C. §102(b) and allowance is earnestly solicited.

***Claim Rejections – 35 U.S.C. § 103***

**35 U.S.C. § 103(a)**

Claims 41 through 48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of U.S. Patent No. 6,431,428 by Chen (hereinafter referred to as Chen). Applicant respectfully traverses.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Ryoka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). See also *In re Wilson*, 165 U.S.P.Q. 494 (C.C.P.A. 1970). Further, “to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” (emphasis added) (MPEP § 2143). If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. (emphasis added) *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Claim 41 from which Claims 42, and 45 through 48 depend includes the limitation of “a pinion coupled with the axle by a first mounting member and a second mounting member pivotally coupled with the adjustable angle magazine” which are not disclosed or suggested by either Anderson or Chen or a combination thereof as indicated by the Office in the Office Action of May 16, 2005. Page 5, Allowable Subject Matter Paragraph. As such, Applicant respectfully

requests the removal of the pending 35 U.S.C. §103(a) rejection and allowance of Claims 41, 42, and 45 through 48 is earnestly solicited.

**Allowable Subject Matter**

Independent Claim 41 has been amended to include subject matter indicated to be allowable. Office Action, May 16, 2005; page 5. As such, claims depending from Claim 41 (Claims 42 and 45 through 48) contain allowable subject matter.

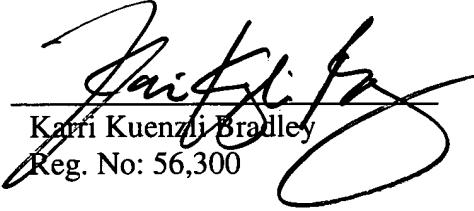
**CONCLUSION**

In light of the foregoing amendments, reconsideration of all pending claims is requested and a Notice of Allowance is earnestly solicited.

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